International Trade Remedies Forum

Summary of meeting outcomes and action items

5 December 2018

## Agenda item 1 – Introduction and welcome

The Commissioner of the Anti-Dumping Commission (Commissioner) opened the meeting and welcomed Minister Andrews noting her history with the anti-dumping system.

## Agenda item 2 – Minister for Industry, Science and Technology remarks

Minister Andrews confirmed that her appointment as Minister for Industry, Science and Technology included responsibility for anti-dumping. The Minister indicated her enthusiasm for understanding the issues and noted that while the Anti-Dumping Commission (ADC) was previously in a period of transition she has witnessed the change that has occurred over the last two years. The Minister noted that the ADC has matured and that she is eager to hear views from members.

Minister Andrews reiterated her commitment to anti-dumping and for making evidence-based decisions. The Minister highlighted that the Australian Government is rigorously defending Australia’s position at the World Trade Organization in relation to the A4 copy paper dispute. Minister Andrews stated that there was a lot of activity internationally regarding trade and was confident that Australia has a robust anti-dumping and countervailing (subsidy) system to respond to any developments that may impact us. The Minister thanked the Commissioner and sub‑committees for their ongoing work behind the scenes.

Mr Luke Hawkins, representing Capral Ltd, asked the Minister for an update on the policy reform package. The Minister indicated she is waiting on further advice prior to making a decision on the package in 2019. Mr Andrew Hudson, representing both Customs Brokers and Forwarders Council of Australia and the Food and Beverage Importers Association, highlighted the importance of the proposal concerning binding rulings on the scope of goods subject to measures. Mr Hudson also noted that the reform relating to granting an automatic exemption from anti-dumping measures where a tariff concession order is in place is another high priority matter. On the matter of binding rulings, the Commissioner indicated that it is not currently in the ADC’s role to provide this advice.

Mr Matt Condon, representing Liberty Steel, highlighted the importance of both access to import data and the policy proposal on the form of duties. Mr Ross Hampton, representing the Australian Forest Products Association, was pleased that the Government was committed to defending the A4 copy paper dispute. Mr Alan Gibbs, representing BlueScope Steel, described high confidence in the system and noted that Anti-Dumping Review Panel (ADRP) results indicated an endorsement of the system. The Minister agreed that there has been a greater endorsement of decisions by the ADRP and that decisions were, in most cases, being upheld.

Mr Travis Wacey, representing the Construction, Forestry, Maritime, Mining and Energy Union, queried whether the Commission was being adequately funded given the ongoing workload. Mr Wacey mentioned that the Commission is continually adapting to keep up with the workload but suggested increasing resources to include additional investigation teams would assist. The Minister noted that there had been additional funding and was happy to have further discussions with the Commissioner on the matter. The Commissioner mentioned that the ADC had invested to bring timeframes down and that internationally its timeframes tend to be quicker than its counterparts. It was also noted that EY has been engaged to review internal processes and the Commission will update the Minister on the outcome of that review in the New Year.

## Agenda item 3 – Sub-committee chair updates

Mr Condon provided an update on the work of the sub-committee on compliance and anti‑circumvention. Mr Condon identified three key roles for the sub-committee. Firstly, policy options to ensure the effectiveness of measures. Secondly, the committee will provide feedback to the ADC in relation to anti-circumvention inquiries completed to date. Finally, a key priority for the committee relates to the policy recommendations made to the Department of Industry, Innovation and Science (the department).

During questions and answers with Mr Condon, Mr Paul Sexton, Investigations General Manager in the ADC, noted that anti-circumvention matters are relatively new for the ADC and that circumvention can be difficult to investigate. Mr Sexton noted that the ADC does not have coercive powers. Mr Hudson queried whether a whole of government response could be utilised to engage with foreign governments. Mr Sexton confirmed that the ADC does have contact with foreign governments. Members discussed whether reforms to allow negative inferences or apply coercive powers would assist information gathering. Several members expressed concerns about these options, and noted that coercive powers would have limited utility with foreign entities. DFAT provided some background noting that circumvention is not reflected in WTO rules and that it is important to distinguish between circumvention and criminal activity. DFAT also noted that transshipment, reflected in the WTO Anti-Dumping Agreement, may not necessarily constitute circumvention.Mr Hawkins commented that their customer base is being targeted by transhipment services and there was scope to strengthen the anti-circumvention provisions. The Commissioner noted that relevant agencies, including the ADC had recently met with the US Customs and Border Protection about enhancing cooperation.

Mr Condon requested a brief on the recent transhipment matter from both the applicant and the ADC to discover what the limitations were. Mr Nathan Zhivov, Economic and Strategic Services General Manager in the ADC, committed to including this on the agenda for the next sub-committee meeting.

Action Item 1: Commission to organise briefing to the compliance and anti‑circumvention sub‑committee concerning the transhipment case.

Mr Wacey provided an update on the work of the sub-committee on access to import data. Mr Wacey noted that the committee had held five meetings since its establishment. Mr Wacey outlined the terms of reference for the sub-committee and its role. A key priority for the sub-committee has been advancing the earlier recommendations on import data made by the compliance and anti-circumvention sub‑committee (recommendations 6(a)-(e)). The sub-committee had focused its work on Treasury’s review of the Statistics Determination, but its proposals had not been taken up in that process.[[1]](#footnote-1) The sub‑committee had also discussed Australian Bureau of Statistics (ABS) policies on confidentiality, and received advice from other jurisdictions about their approaches to import data, which may require further analysis. Mr Becroft, representing the Law Council of Australia, queried whether the ABS could provide any reference material about its confidentiality policies. Mr Branko Vitas, representing the ABS, advised that the ABS is refining its materials in response to feedback from sub-committee members and will circulate them to the Forum once finalised. [[2]](#footnote-2)

## Agenda item 4 – DFAT update

### 4.1 WTO A4 copy paper dispute

The Commissioner noted that Australia is managing its first WTO dispute on anti-dumping issues and that the ADC is working closely with DFAT to defend the case. The Commissioner invited Mr Russell Wild, representing DFAT, to provide an update.

Mr Wild indicated that the key challenges from Indonesia were the application of a particular market situation (PMS) and construction of the normal value. Mr Wild noted that this is the first time PMS has been litigated before the WTO. On the current status of the dispute, Mr Wild outlined that consultations have taken place and a three person panel has been composed. Both parties to the case have now submitted their first submissions. Of the 14 third party participants, only the EU, US, Japan, Korea and China have submitted formal written submissions. The first hearing is scheduled for 18 and 19 December 2018.

Mr Zhivov reaffirmed the ADC’s commitment to the case noting the team includes a full time senior legal officer and the original investigator. Mr Zhivov also flagged that Indonesia is focusing on the particular measure as applied in this case rather than seeking to alter the Commission’s practice more broadly. Mr Zhivov assured members that they will be kept informed as the matter progresses.

Mr Hampton questioned whether Indonesia views the trade agreement as a separate issue to the WTO dispute. Mr Wild indicated that the two issues were not related and the WTO dispute had no influence on the wider relationship between the nations. Mr Wacey asked whether the approaches utilised in this case had also been taken in other cases. Mr Wild advised that Indonesia has only challenged Australia’s application of its anti-dumping system in this particular investigation, and any broader implications would depend on the specific findings of the Panel.

## Agenda item 5 – Update from the Anti-Dumping Policy Section

Mr Martin Squire, Trade and International General Manager in the department, flagged that the department is currently providing further advice to the Minister on the reform package. In the meantime, members may continue to raise any further proposed reforms.

Mr Hawkins commented that members were not aware as to what proposals made the final recommendation to the Minister. The Anti-Dumping Policy Section advised that the second round of consultations was used to refine the proposals before they were provided to the Minister.

Mr Hudson questioned whether, due to the upcoming election, the package may not go forward and whether a decision would be made prior to the election. Mr Squire mentioned that the issue of timing was a matter for Government and resources for the development of legislation would only be allocated following a decision by Government. Mr Brennan outlined the process going forward including a decision from the Minister, agreement by the Prime Minister to present to Cabinet, approval by Cabinet, then draft legislation. Mr Clark queried the preferred method for inclusion of a discussion on public interest by the Forum. Mr David Birrell cited the 2009 Productivity Commission report that recommended a bounded public interest test. Mr Hudson also reminded members of the 2011 ‘Streamlining Australia’s anti-dumping system’ recommendation for the Minister to provide a direction to the CEO of Customs and Border Protection to include an assessment of any significant impacts on the market when recommending measures. Mr Wacey indicated support for the existing Ministerial discretion on public interest. Mr Condon questioned under what circumstances does allowing foreign companies to materially injure Australian businesses and producers with unfair trade, ever be considered to be in Australia’s Public Interest? Mr Lee noted that as public interest did not have political support, the ITRF should consider efforts in other areas of reform. As members expressed a range of views on the matter, the Commissioner made a commitment to consider discussions at a future meeting of the Forum. DFAT expressed support for continuing discussions on the matter.

## Agenda item 6 – Anti-Dumping Commission update

### 6.1 Action items from previous meeting

The Commissioner confirmed with members the outcomes of the Forum’s meeting on 17 April 2018. These meeting outcomes have now been published on the ADC’s [website](https://www.industry.gov.au/sites/default/files/2019-05/international_trade_remedies_forum_-_meeting_17_april_2018.pdf).

Previous action item 1: Commission to circulate the Cadence Economics report and invite comment from Forum members on the impact of the US tariffs on steel and aluminium

The Commissioner informed members that the Secretariat had circulated the report and thanked members for their comments.

Previous action item 2: Commission to invite views from Forum members on the NFF’s proposal for a review and sub-committee on the ‘close processed agricultural good’ definition

The Commissioner thanked members for their responses to NFF’s proposal and invited Dr Pru Gordon from the NFF to make further comments. Dr Gordon noted there was limited interest expressed by members to establish a sub-committee. NFF’s members are eager to progress this discussion and are currently considering seeking to join the Forum to further the issue.

### 6.2 Operational matters (standing item)

Mr Sexton advised that the ADC’s workload has increased with 59 matters currently being managed. Mr Sexton noted that a significant proportion of the caseload relates to duty assessments and that there are currently two anti-circumvention cases.

Mr Andrew Dettmer, representing the Australian Manufacturing Workers’ Union, queried whether additional resources would assist the ADC to manage the high workload. The Commissioner noted that while he would always welcome more resources for the ADC, the ADC continues to provide certainty to industry despite a constantly changing global trade environment. A key priority for the ADC is improving engagement with SMEs and the current review of the new investigations model will provide a solid evidence base to seek increased resources where needed.

Mr Becroft asked what proportion of cases went to the ADRP. Mr Sexton noted that the Minister had requested data concerning reviews and found that from 2016 over a two year period one third of decisions went to the review panel. The ADRP preferred a different approach in one-third of those cases appealed, resulting in around 12 per cent of decisions being overturned.

The ADC provided a presentation to members outlining the ADC’s work on trade flow tracking. The newly established Trade Remedies Index (TRINDEX) tracks 14 products subject to measures (predominately steel) to inform the Commissioner on a monthly basis. While the TRINDEX is currently an internal product, government agencies are working together to consider the feasibility of a public version.

Mr Nick Kamper, representing the Australian Workers’ Union, queried whether the methodology used will be released. Mr Smith advised that broadly a weighted average of prices and volumes is assessed and that if TRINDEX was released, it will include details on the methodology used. The Commissioner noted that the decision to release is a decision for the Commonwealth given a number of government agencies have an interest in this work. The Home Affairs portfolio assured members that while there is no interest in unnecessarily restricting data, agencies need to be confident that it is done so appropriately.

Members expressed general support for the release of this data. Mr Condon queried whether findings in the TRINDEX supported the analysis by Cadence Economics. Mr Smith indicated that the findings were consistent with the Cadence modelling noting that the Cadence modelling did not go down to the product level.

## Agenda item 7 – Home Affairs portfolio update

Acting Regional Commander ACT/HQ, Malcolm Phelps from the Australian Border Force (ABF), outlined the ABF Commissioner’s key operational priorities. This includes setting the ABF as Australia’s customs service and increasing focus on trade enforcement. Acting Commander Phelps noted that ABF are reducing bureaucratic barriers and increasing their intelligence capability. It was also noted that ABF are working on the release of the next goods compliance update. An operational update was provided for this financial year that included nine audits finalised out of 31 underway that resulted in $2.5 million duties being collected.

Assistant Secretary Customs and Border Revenue, Matthew Duckworth from Home Affairs noted that the line pipe tariff classification advice was currently awaiting final clearances and was scheduled to be published in the coming weeks. The advice will be published on the ABF website.[[3]](#footnote-3)

Mr Wacey queried whether goods subject to anti-dumping measures were over represented in compliance statistics. Superintendent Customs Compliance Operations, Clarissa Farrington from the ABF clarified that they were over represented as they have been the focus for ABF over the last 4 – 5 months. Mr Becroft queried the scope of ABF’s focus on prosecutions and Commander Phelps confirmed that prosecutions related to both criminal and civil matters.

## Agenda item 8 – Other business (standing item)

Nil

## Agenda item 9 – Next meeting and closing remarks

The ITRF Secretariat will inform members of the next meeting date. The Commissioner thanked members for their participation and closed the meeting.

1. A copy of the submission made by non-government members of the sub‑committee to Treasury is available on Treasury’s [website](https://static.treasury.gov.au/uploads/sites/1/2018/06/c2017-t236646-International-Trade-Remedies-Forum-non-government-members.pdf). [↑](#footnote-ref-1)
2. The *ABS Confidentiality information paper* and the *International Trade Concepts, Sources and Methods information paper* were circulated to ITRF members on 28 February 2019 by the ITRF Secretariat on behalf of ABS. [↑](#footnote-ref-2)
3. Line pipe classification advice was circulated to members on 11 December 2018 and was published on the Australian Border Force website on 12 December 2018. [↑](#footnote-ref-3)